

JAN I. GOLDSMITH, City Attorney
ANDREW JONES, Assistant City Attorney
JOHN E. RILEY, Deputy City Attorney
California State Bar No. 144268
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendants CITY OF SAN DIEGO, MARK RINGGENBERG,
CARLOS REAL AND L. JOHNSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRED CLARK, JR.,

Plaintiff,

v.

THE CITY OF SAN DIEGO
OFFICER MARK RINGGENBERG
(#6605), OFFICER CARLOS REAL
(#5495) OFFICER L. JOHNSON (5954),

Defendants.

Case No. 12cv1186 JLS (BLM)

**DEFENDANTS CITY OF SAN
DIEGO, MARK RINGGENBERG,
AND CARLOS REAL'S NOTICE
OF MOTION AND MOTION FOR
SUMMARY JUDGMENT**

Date: June 21, 2013

Time: 1:30 p.m.

Judge: Janis L. Sammartino

Court Room: 4A, Schwartz

TO PLAINTIFF FRED CLARK JR., AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on **June 21, 2013, at 1:30 p.m.** or as soon
thereafter as the matter maybe heard in Courtroom 4A,Fourth Floor (Schwartz) of
the Honorable Janis L. Sammartino in the above-entitled court, located at 221 West
Broadway, San Diego, California, Defendants City of San Diego, Officer Mark
Riggenberg (*erroneously* sued as Mark Ringgenberg), and Officer Carlos Real by
and through their attorney of record John Riley, will move the Court pursuant to
Federal Rule of Civil Procedure section 56 to grant this Motion for Full or Partial
Summary Judgment.

1 This motion will be based on this Notice of Motion and Motion for Summary
2 Judgment; the City Defendants' Memorandum of Points and Authorities in support
3 of this motion; the Declarations in Support of City Defendants' Motion for Full or
4 Alternatively, Partial Summary Judgment, the pleadings; the City Defendants'
5 request for judicial notice; the City Defendants' list of evidence; as well as all other
6 papers, affidavits, exhibits, deposition transcripts or other documents lodged
7 concurrently with this motion, and further oral and documentary evidence and
8 matters as may be presented to the court upon the hearing of said motion.

9 The grounds for this motion are that the facts do not support, as a matter of
10 law, a constitutional violation of the U.S. Constitution. Therefore, there is no legal
11 basis for Plaintiff's causes of action for violation of the Federal Civil Rights Act, 42
12 U.S.C. § 1983 including the claims of lack of probable cause to arrest, the lack of
13 reasonable suspicion to detain, the use of excessive use of force, malicious
14 prosecution or the custom, practice or policy of the City which would support
15 Plaintiffs "*Monell*" claim. In the alternative Defendants seek the adjudication of the
16 following issue of law:

17 **ADJUDICATION NO. 1:**

18 There was probable cause arrest Plaintiff.

19 **ADJUDICATION NO. 2:**

20 Probable cause to arrest law negates Plaintiff's claim of False Arrest

21 **ADJUDICATION NO. 3:**

22 Malicious Prosecution – probable cause to arrest Plaintiff negates this claim.

23 **ADJUDICATION NO. 4:**

24 Malicious Prosecution – Plaintiff was not successful on all counts at the
25 criminal trial, thus negating his claim for malicious prosecution.

26 **ADJUDICATION NO. 5:**

27 Malicious Prosecution – Plaintiff does not meet the burden of proof to
28 support a 1983 claim for malicious prosecution.

1 **ADJUDICATION NO. 6:**

2 The Officers are entitled to Qualified Immunity relative to the detention and
3 arrest of Plaintiff.

4 **ADJUDICATION NO. 7:**

5 The use of force by defendants was reasonable under the totality of the
6 circumstances.

7 **ADJUDICATION NO. 8:**

8 The officers are entitled to Qualified Immunity relative to their use of force.

9 **ADJUDICATION NO. 9:**

10 There is no evidence to support a *Monell* claim against the City of San
11 Diego.

12
13 Dated: April 29, 2013

JAN I. GOLDSMITH, City Attorney

14
15 By /s/ John E. Riley

16 John E. Riley
Deputy City Attorney

17 Attorneys for Defendants
18 CITY OF SAN DIEGO, MARK
19 RINGGENBERG, AND CARLOS REAL
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